



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2018-0014]

RIN 1625-AA08

Special Local Regulation; Black Warrior River, Tuscaloosa, AL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation on the Black Warrior River, extending the entire width of the river, from mile marker (MM) 338.5 to MM 339.5 in Tuscaloosa, AL. This special local regulation is necessary to protect the persons participating in the USA Triathlon Collegiate National Championships marine event. This regulation restricts transit into, through, and within the regulated area unless specifically authorized by the Captain of the Port Sector Mobile (COTP) or a designated representative.

DATES: This rule is effective from 4 a.m. on April 27, 2018 through 6 p.m. on April 28, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0014 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Kyle D. Berry, Sector Mobile, Waterways Management Division, U.S. Coast Guard; telephone 251-441-5940, email Kyle.D.Berry@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Mobile
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
MM	Mile marker
NPRM	Notice of proposed rulemaking
PATCOM	Patrol Commander
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On November 31, 2017, the sponsor for the USA Triathlon Collegiate National Championships marine event submitted an application for a marine event permit for the event from 4 a.m. on April 27, 2018 through 6 p.m. on April 28, 2018. In response, on March 2, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Special Local Regulation; Black Warrior River, Tuscaloosa, AL (83 FR 8955). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this triathlon event. During the comment period that ended April 2, 2018, we received one comment.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register because it is impracticable and contrary to the public interest. Delaying the effective date of this rule would delay the safety measures necessary to respond to potential safety

hazards associated with this triathlon event. Immediate action is needed protect participants, spectators, and other persons and vessels during the triathlon event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The Captain of the Port Sector Mobile (COTP) has determined that potential hazards associated with the triathlon event on April 27, 2018 and April 28, 2018 will be a safety concern for anyone within the area of the Black Warrior River between mile markers (MMs) 338.5 and 339.5. The purpose of this rule is to protect participants, spectators, and other persons and vessels before, during, and after the Triathlon event.

IV. Discussion of the Rule

As noted above, we received one comment on our NPRM published March 2, 2018. The comment received was unrelated to the subject matter of this rulemaking. However, the regulatory text has been changed from the proposed rule in the NPRM to include specific times for daily enforcement during the effective period.

This rule establishes a special local regulation on April 27, 2018 and April 28, 2018, which will be enforced between the hours of 4 a.m. and 6 p.m. daily. The regulated area will cover all navigable waters of the Black Warrior River between MMs 338.5 and 339.5, extending the entire width of the navigable channel. The duration of the regulation is intended to protect participants, spectators, and other persons and vessels before, during, and after the triathlon event. No vessel or person will be permitted to enter, transit within or through, or exit the regulated area without obtaining permission from the COTP or a designated representative. A designated representative may be a Patrol Commander (PATCOM). The PATCOM may be aboard either a Coast Guard or

Coast Guard Auxiliary vessel. The Patrol Commander may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign “PATCOM”.

All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The “official patrol vessels” consist of any Coast Guard, state, or local law enforcement and sponsor provided vessels assigned or approved by the Captain of the Port (COTP) Mobile to patrol the regulated area.

Spectator vessels desiring to enter, transit through or within, or exit the regulated area may do so only with permission from the Patrol Commander, and when permitted, must operate at a minimum safe navigation speed in a manner which will not endanger participants in the regulated area or any other vessels. No spectator vessel shall anchor, block, loiter, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel. Any spectator vessel may anchor outside the regulated area, but may not anchor in, block, or loiter in a navigable channel. Spectator vessels may be moored to a waterfront facility within the regulated area in such a way that they shall not interfere with the progress of the event. Such mooring must be complete at least 30 minutes prior to the establishment of the regulated area and remain moored through the duration of the event.

The COTP or a designated representative may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

The COTP or a designated representative may terminate the event or the operation

of any vessel at any time it is deemed necessary for the protection of life or property. The COTP or a designated representative would terminate enforcement of the special local regulations at the conclusion of the event.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-year of the regulation. The special local regulation will take place on a one-mile stretch of navigable waterway, during a short duration of eleven hours on two days on the Black Warrior River from mile marker 338.5 to 339.5 on April 27, 2018 and April 28, 2018. Moreover, the Coast Guard will issue Broadcast Notices to Mariners (BNMs) via VHF-FM marine channel 16 about the regulation so that waterway users may plan accordingly for transits during this restriction. The rule also allows vessels to seek permission from the COTP or a designated representative to enter the regulated area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The

Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local,

or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation on the Black Warrior River, extending the entire width of the river, from MM 338.5 to MM 339.5. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part

100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 33 CFR 1.05-1.

2. Add § 100.35T08-0014 to read as follows:

§ 100.35T08-0014 Special Local Regulation; Black Warrior River, Tuscaloosa, AL.

(a) Regulated area. All navigable waters of the Black Warrior River between mile markers 338.5 and 339.5 in Tuscaloosa, AL.

(b) Effective period. This section is effective from 4 a.m. on April 27, 2018 through 6 p.m. on April 28, 2018.

(c) Enforcement periods. This section will be enforced from 4 a.m. through 6 p.m. daily from April 27, 2018 through April 28, 2018.

(d) Special local regulations. (1) In accordance with the general regulations in § 100.801, entry into, transit within or through, or exit from this area is prohibited unless authorized by the Captain of the Port Sector Mobile (COTP) or a designated representative. A designated representative may be a Patrol Commander (PATCOM). The PATCOM may be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Patrol Commander may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign “PATCOM”.

(2) All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The “official patrol vessels” consist of any Coast Guard, state, or local law enforcement and sponsor provided vessels assigned or approved by the Captain of the Port (COTP) Mobile to patrol the regulated area.

(3) Spectator vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer will be operated at a minimum safe navigation speed in a manner which will not endanger participants in the regulated area or any other vessels.

(4) No spectator vessel shall anchor, block, loiter, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

(5) Any spectator vessel may anchor outside the regulated area, but may not anchor in, block, or loiter in a navigable channel. Spectator vessels may be moored to a waterfront facility within the regulated area in such a way that they shall not interfere with the progress of the event. Such mooring must be complete at least 30 minutes prior to the establishment of the regulated area and remain moored through the duration of the event.

(6) The COTP or a designated representative may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(7) The COTP or a designated representative may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(8) The COTP or a designated representative will terminate enforcement of the special local regulations at the conclusion of the event.

(e) Informational broadcasts. The COTP or a designated representative will inform the public through Broadcast Notices to Mariners of the enforcement period for the temporary safety zone as well as any changes in the planned schedule

Dated: April 17, 2018

M.R. MCLELLAN,
Captain, U. S. Coast Guard,
Captain of the Port Sector Mobile.

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